

NATURAL RESOURCES COMMISSION

Meeting Minutes

May 2, 2007

Pursuant to the notice duly filed with the Town Clerk, the meeting of the Natural Resources Commission was held in the First Floor Meeting Room, 141 Keyes Road, Concord, MA at 7:00 p.m. on Wednesday, May 2, 2007. The following Commissioners were present: Chair, Alexander Easterday; Montgomery Lovejoy; Jamie Bemis; Steve Verrill and Associate Member George Lewis. Delia Kaye, Natural Resources Administrator, Katie Holden, Natural Resources Assistant Administrator, and Cynthia Gray, Natural Resources Administrative Assistant, were also present.

CONTINUANCES:

DEE BUS SERVICE, INC. / NOI – DEP FILE #137-923:

Commission Member Montgomery Lovejoy excused himself from discussion on this particular matter because his firm is representing the Applicant. Michael Wierbonics, Environmental Scientist of Earth Tech, Inc. appeared. This filing is an after-the-fact NOI for unauthorized vegetation removal. Michael Wierbonics stated he reviewed the wetland line with Delia Kaye in January, and that the minor changes discussed in the field were reflected on the plans. He presented a revised plan at this evening's meeting. Michael Wierbonics indicated that trees and shrubs had been taken down leaving debris, which because of its volume was considered fill. Mitigation would involve removing two areas of debris by hand, revegetate disturbed areas with a native wetland seed mix, and replanting at a 1.5:1 ratio.

The Commission discussed outstanding issues regarding a ZBA permit and the need to visit the site.

Michael Wierbonics indicated to the Commission that he was only retained by the client to do a planting plan.

Steve Verrill asked Michael Wierbonics what the client's intent was by taking down the trees and shrubs.

Michael Wierbonics indicated that his client wished to improve access to the rear of the property.

Delia Kaye indicated that eleven trees had been taken down and that at least that number would need to be replanted. Revised plans would need to be submitted to reflect this, with a corresponding reduction in the number of shrub plantings.

A portion of the vegetation removal occurred on an adjacent parcel owned by the Rohans, and to date no written permission for work proposed on their property has been received. Mr. Wierbonics also stated that the abutter notification to the Rohans had been returned unclaimed.

A site visit was scheduled for May 9th at 3:30 p.m. with Michael Wierbonics. The Commission asked that a representative of Dee Bus also be present.

The hearing was continued to May 16th contingent upon additional requested information being supplied to DNR staff on or before May 15th.

Commission Member Montgomery Lovejoy returned to the meeting.

CAGGIANO – 94 Dalton Road / NOI-DEP File #137-922:

Scott Smyers of Oxbow Associates appeared together with the Owner/Applicant, Matthew Caggiano. This project involves renovations and an addition to an existing single-family home located at the end of a cul-de-sac within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

Scott Smyers presented the Commission with a revised plan. Scott Smyers was still of the impression that the soils did not fit the definition of organic soils and therefore, were not hydric. Scott stated he was prepared to take a sample to the lab to understand if the soil was mineral or organic. Scott stated the Applicant was willing to move the wetland line to the edge of the naturally vegetated area.

The Commission discussed the 50-foot setback policy for new structures and the importance of accurately establishing the wetland line.

Montgomery Lovejoy indicated that additional field work needed to be done as well as having an additional meeting to discuss the findings of a detailed soil analysis.

Jamie Bemis indicated that the Commission needed more field work documentation.

Alexander Easterday suggested the Commission hire Chuck Katuska to collect the soil information.

Scott Smyers indicated that he needed 48 hours advance notice in order to be present for the proposed site visit for soil testing.

The hearing was continued to May 16th.

ESTABROOK ROAD NOMINEE TRUST (Parafestas) – 55 Estabrook Road / NOI-DEP File #137-925:

Jeffrey L. Johnson, a Professional Wetland Scientist of Holmes and McGrath, Inc. appeared. This project is for construction of an addition to an existing single-family home, driveway reconfiguration, invasive species work, renovations to existing terrace and landscaping within the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

Jeffrey L. Johnson discussed the temporary stone parking area and removal of invasive species and replanting. The width of the grassy meadow would be increased. The new owner, who purchased the property in October of 2006, mows the meadow once a year on the south side of the brook. The Applicant will mow the 5-foot buffer north of the brook twice a year. Comments from Natural Heritage were received indicating that the Owner/Applicant was exempt from MESA requirements and the project as currently proposed will not adversely affect the actual Resource Area Habitat of state-protected rare wildlife species.

The hearing was continued to May 16th at which time the Commission expects to close and issue an Order of Conditions.

KRAMER – 71 Spencer Brook Road / NOI-DEP File #137-926

William McNary of Stamski and McNary appeared together with Owner/Applicant, Robert Kramer. This project is for installation of underground utilities, repair of existing driveway and the construction of additional driveway.

William McNary presented plans which show a revised siltation barrier and location of the underground utility trench outside of the 25' No Disturb Zone with no proposed contours or elevations.

Delia Kaye indicated that conducting a StreamStats analysis would provide the evidence needed to meet the Regulations to determine if the stream is perennial or intermittent.

Alexander Easterday indicated his preference in collection of information per the regulations as relying on the Affidavit would set dangerous precedent. Jamie Bemis concurred, and stated that she was not comfortable accepting an Affidavit as credible evidence because it was too difficult to accurately assess whether those observations had been made during drought or non-drought years.

The Commission agreed the Applicant should (1) conduct a StreamStats analysis (2) do a Riverfront analysis (which would result in the Applicant incurring an additional wetland filing fee) if they determined that the stream was perennial.

Jamie Bemis disclosed that Ned Perry is related to her.

Robert Kramer asked if it would be possible to obtain partial approval of the project thus far as the house was already up and if the utility work could continue. The Commission stated this was not possible.

Katie Holden stated that DEP comments had not been received yet.

The hearing was continued to May 16th.

NEW APPLICATIONS:

THOMPSON – 330 Main Street / NOI-DEP File # 137-928

Chuck Budnick of Cabco Consult appeared. This project involves replacing a garage and constructing an in-ground swimming pool and reconfiguring the driveway within the 200—foot Riverfront Area of the Sudbury River and Estimated Habitat of Rare Species.

Chuck Budnick discussed replacing the existing wire fencing with new wire fencing.

Alexander Easterday recommended that Chuck Budnick note on the plan that the bottom of the fencing be shown 4 inches from the ground to allow wildlife movement. Alexander Easterday asked if any alternatives were discussed with regard to the location or size of the garage.

Chuck Budnick stated there is a one-of-a-kind beech tree that would need to be removed if the garage was moved forward. The garage would be larger than the existing one as there would be 10 feet extra on the back side area. No comments have been received from Natural Heritage.

Delia Kaye requested that a revised set of plans with the fence information be submitted to DNR staff.

The hearing was continued to May 16th.

KIMBALL (n/k/a Breitmaier) – 50 Garfield Road / Amended NOI-DEP File #137-830

Steve Breitmaier appeared on behalf of Concord Road Realty Trust. The Applicant proposes invasives removal, installing a drainage structure, moving a proposed wall to the 25-foot no disturb zone, and

realigning the proposed house within the 100-foot Buffer Zone to Bordering Vegetated Wetlands. The retaining wall location was specified as a Special Condition in the OOC, and changing this location requires NRC approval.

Steve Breitmaier indicated that he had had a preconstruction site visit with DNR staff, and that he was interested in conducting the invasive species removal and drainage structure installation as a benefit to the town and neighbors, but would like to move the retaining wall closer to wetlands to provide more lawn as mitigation for this increased work.

The Commission stated they supported the invasive species work and proposed drainage improvements, but that they would prefer keeping the existing limit of work where it is. Alexander Easterday indicated that Mr. Breitmaier could work with NRC staff on the drainage and invasive control work to administratively approve these changes.

The Commission stated they do not approve the proposed location of the retaining wall.

CLOSE HEARING/ISSUE PERMITS:

GRACE PROPERTIES, LLC – 63B Cambridge Turnpike / NOI-DEP File #137-919

Owner/Applicant, Michael Malouf appeared. The hearing was closed at last meeting.

Jamie Bemis discussed the distances from wetlands to structures and setting a new precedent.

Katie Holden discussed this being a unique case of a restricted two-lot subdivision.

Montgomery Lovejoy moved to approve the standard Order of Conditions with special conditions. Steve Verrill seconded. Three voted in favor. Jamie Bemis opposed.

ISSUE CERTIFICATE OF COMPLIANCE:

ROBICHAUD – 844 Sudbury Road, DEP File #137-494

Steve Verrill moved to issue a Certificate of Compliance. Jamie Bemis seconded. All so voted.

OTHER BUSINESS:

WWP Conservation Restriction – DNR staff discussed their conversation with Gordon Bell who reviewed the proposed Conservation Restriction. There was concern of the conservation value or public benefit. The trail easement proposed on property adjacent to the proposed Conservation Restriction is not worded to be permanent. The value of the trail closer to the river was discussed. The Commission determined they will wait until review by the State.

Annursnac Hill Road and Commerford Road ANRAD – The Commission agreed to hire Chuck Kataska to review the wetland resource area boundaries.

The Commission scheduled a working session meeting to discuss wetlands for May 30th at 6:30 p.m.

597 Lowell Road – Enforcement Order – Katie Holden discussed visiting a wetlands violation at 597 Lowell Road with Jamie Bemis. During this site visit in January, the property owner agreed to hire a wetland scientist and file an application with the Commission. Katie Holden contacted the property owner after the ground thawed in April and the property owner informed Katie Holden that she did not intend to file an application with the Commission. Steve Verrill moved to ratify the Enforcement Order. Montgomery Lovejoy seconded. All so voted.

The meeting adjourned 9:45 p.m.

Respectfully submitted,

Delia Kaye, Natural Resources Administrator

Katherine Holden, Natural Resources Assistant Administrator

Cynthia L. Gray, Natural Resources Administrative Assistant